



POSTAL SERVICE

5 CFR Part 7001

RIN 3209-AA51

Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service (Postal Service), with the concurrence of the United States Office of Government Ethics (OGE), proposes to amend the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service by updating and refining outside employment and activity provisions (including prior approval requirements and prohibitions), by adding new requirements applicable to Postal Service Office of Inspector General (OIG) employees and Postal Service Governors, and by making limited technical and ministerial changes.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be mailed or delivered to Jessica Brewster-Johnson, Senior Ethics Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1101; or submitted to supplemental.standards@usps.gov. Faxed comments will not be accepted.

All written comments may be inspected and photocopied, by appointment only, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC. These records will be available for review Monday through Friday, 9 a.m. - 4 p.m., by calling 202-268-2906. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jessica Brewster-Johnson, Senior Ethics Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1101, 202-268-6936.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Ethics in Government Act of 1978, as amended, and other legal authority, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards) on August 7, 1992, which were codified in 5 CFR part 2635. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583, with additional grace-period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. The Standards, which became effective on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

Under 5 CFR 2635.105, agencies may issue, with OGE's concurrence, agency-specific regulations that supplement the Standards when the agency determines that such supplemental regulations are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of the Standards. Under 5 CFR 2635.802(a), agencies are authorized to issue supplemental regulations prohibiting employees from engaging in outside employment or other outside activities that conflict with their official duties. Under 5 CFR 2635.803, agencies are authorized to issue supplemental regulations requiring employees to obtain prior approval before they engage in outside employment or other outside activities.

On September 11, 1995, the Postal Service issued, with OGE's concurrence, the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service (Supplemental Standards), which were codified in 5 CFR part 7001. See 60 FR 47240-47241. The Supplemental Standards prohibit employees from engaging in certain outside employment or business activities and require prior approval for employees to engage in other outside employment or business activities.

The Postal Service has now determined that amendment of the Supplemental Standards is needed for the reasons explained below.

II. Explanation of Changes

A. Amendment of § 7001.102(a)(1) to Modify the Restrictions on Employees' Outside Employment or Business Activities With or For Manufacturers of Uniforms or Other Postal-Required Products

Section 7001.102(a)(1)(i) of the Supplemental Standards currently prohibits employees from engaging in outside employment or business activities with or for persons, including the employees themselves, engaged in the manufacture of any uniform, or other product required by the Postal Service for use by its employees or customers ("other postal-required products"). The Postal Service proposes to eliminate this prohibition.

In connection with the issuance of the Supplemental Standards, the Postal Service discussed the reason for the current prohibition in § 7001.102(a)(1)(i). See 60 FR 15700. The Postal Service explained that the involvement of employees in the outside employment and business activities covered by that provision could cause members of the public to question the impartiality and objectivity with which postal programs are administered because it could create the appearance that the employees, or persons they represent or with whom they are otherwise affiliated, are in a position to benefit from knowledge or influence gained by the employees through their official positions.

The Postal Service has now concluded that the prohibition in § 7001.102(a)(1)(i) is unduly restrictive. The Postal Service has determined that the impartiality and objectivity concerns raised in connection with the initial issuance of the Supplemental Standards may adequately be addressed without outright prohibiting the sizeable postal workforce (many of whom are part-time employees) from engaging in the outside employment or business activities covered by § 7001.102(a)(1)(i). In making this determination, the Postal Service has considered that its experience since the initial issuance of the Supplemental Standards has been that employees' outside employment or business activities with or for manufacturers of uniforms or other postal-required products would in many cases not cause members of the public to question the impartiality and objectivity with which postal programs are administered. This is because uniform programs are administered by a discrete postal headquarters organization and

are not affected by employees outside that organization, and other postal-required products are similarly administered.

With the elimination of the prohibition in § 7001.102(a)(1)(i), employees will be required to obtain approval from the Postal Service's Ethics Office prior to engaging in outside employment or business activities with or for manufacturers of uniforms or other postal-required products in situations covered by the existing prior-approval process in § 7001.102(b), as revised in these amendments of the Supplemental Standards. Those situations include the following ones in which impartiality and objectivity concerns are most likely to arise in the Postal Service's experience:

(1) the employee has official dealings with the manufacturer on behalf of the Postal Service (§ 7001.102(b)(1)(i)); or

(2) the manufacturer has interests that are substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service (§ 7001.102(b)(1)(ii)(B)).

These situations requiring prior approval would encompass those employees working in the discrete organizations responsible for uniform programs and other postal-required products for whom impartiality and objectivity concerns might be heightened. The review by the Postal Service's Ethics Office under the prior-approval process can be expected to identify and address those employment or business relationships that would present ethical conduct concerns under 5 CFR part 2635 because of the employee's official duties and the manufacturer's interests.

However, regardless of the prior-approval process described above, postal employees will continue to be prohibited from acting as agent, with or without compensation, for any postal contractor for uniforms or other postal-required products, or person offering to become such a contractor. The criminal statute codified at 18 U.S.C. 440 makes it unlawful for postal employees to act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service. This provision is currently incorporated in § 7001.103 of the Supplemental Standards.

Postal employees will also continue to be prohibited from engaging in certain specified outside employment or business activities with postal contractors for uniforms or other postal-required products. As explained in further detail below, renumbered § 7001.102(a)(1) of the Supplemental Standards prohibits employees from engaging in outside employment or business activities that involve providing consultation, advice, or any subcontracting service, with respect to postal operations, programs, or procedures, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract.

B. Amendment of § 7001.102(a)(1) and (b)(1) to Modify the Restrictions on Employees' Outside Employment or Business Activities With or for HCR Contractors

The Postal Reorganization Act, as amended, codified at 39 U.S.C. 5005, authorizes the Postal Service to contract for the surface transportation of mail. The Postal Service enters into Highway Contract Route (HCR) contracts under that statute.

Section 7001.102(a)(1)(ii) of the Supplemental Standards currently prohibits employees from engaging in outside employment or business activities with or for persons, including the employees themselves, engaged in the transportation of mail under Postal Service (HCR) contract to or from the postal facility at which the employee works or to or from a postal facility within the delivery area of a post office in which the employee works ("transportation area criteria"). The Postal Service proposes to eliminate this prohibition and replace it with a provision requiring employees to obtain approval from the Postal Service's Ethics Office prior to engaging in outside employment or business activities with or for any HCR contractor, which will be accomplished by amending § 7001.102(b)(1).

In connection with the issuance of the Supplemental Standards, the Postal Service discussed the reason for the current prohibition in § 7001.102(a)(1)(ii). See 60 FR 15700-15701. The Postal Service explained that any outside employment involving the delivery of mail at or near an employee's workplace, without regard to the nature of the employee's duties, might lead reasonable persons to be concerned that the employee's outside employer was receiving preferential treatment from the Postal Service. Id. The Postal Service has now concluded that the prohibition in § 7001.102(a)(1)(ii) is both unduly restrictive and too narrowly

focused to address conflicts and impartiality concerns adequately. Specifically, the Postal Service has determined that preferential treatment concerns regarding employees engaging in outside employment or business activities with or for persons engaged in the transportation of mail under HCR contract could occur whether or not such outside employment or business activities meet the transportation area criteria described in the current § 7001.102(a)(1)(ii). These concerns, however, may be sufficiently addressed through a prior-approval process without outright prohibiting the sizeable postal workforce (many of whom are part-time employees) from engaging in such outside employment or business activities.

Section 7001.102(b) of the Supplemental Standards currently governs the requirements for employees to obtain prior approval to engage in outside employment or business activities with or for certain categories of persons. The Postal Service proposes to amend § 7001.102(b)(1) to add a provision at § 7001.102(b)(1)(iii) requiring employees to obtain prior approval from the Postal Service's Ethics Office to engage in outside employment or business activities with or for any HCR contractor. This prior-approval requirement is not limited to situations covered by the existing prior-approval process in § 7001.102(b), as revised in these amendments of the Supplemental Standards, which is the case when employees wish to engage in outside employment or business activities with or for manufacturers of uniforms or other postal-required products as discussed above. Rather, this prior approval requirement applies in any circumstance in which employees desire to engage in outside employment or business activities with or for any HCR contractor. This difference is due to the greater impact on the Postal Service of its many HCR contracts nationwide as compared to uniform programs or programs for other postal-required products. The procedure for requesting, and the standard for granting, approval to engage in outside employment or business activities with or for an HCR contractor will be the same as that which exists for requesting and granting approval for other types of outside employment and business activities for which prior approval is required under § 7001.102(b). The review by the Postal Service's Ethics Office under this prior-approval process can be expected to identify and address those employment or business relationships

that would present ethical conduct concerns under 5 CFR part 2635 because of the employee's official duties and the HCR contractor's interests.

As discussed above in the context of outside employment and business activities with or for certain manufacturers, other provisions of the Supplemental Standards will continue to restrict certain activities with respect to HCR contractors. Specifically, renumbered § 7001.102(a)(1) will continue to prohibit employee outside activities that involve providing consultation, advice, or any subcontracting service to a HCR contractor or person offering to become such a contractor, and 18 U.S.C. 440, as incorporated in § 7001.103 of the Supplemental Standards, continues to prohibit employees from acting as agents for any HCR contractor, or person offering to become such a contractor.

C. Amendments to § 7001.102(a) Relating to Outside Employment or Business Activities

The removal of current § 7001.102(a)(1)(i) and (ii), described above, will result in the renumbering of the restrictions found at current § 7001.102(a)(1)(iii) and (iv). To provide additional clarity, the Postal Service proposes to revise the language of these remaining restrictions. First, the Postal Service is modifying the language of current § 7001.102(a)(1)(iii), which prohibits employees from “engag[ing] in outside employment or business activities with or for persons, including oneself, engaged in: providing consultation, advice, or any subcontracting service, with respect to the operations, programs or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract.” The Postal Service stated that its original intent with this provision was to prohibit employees from providing “consultation, advice, or any subcontracting service,” but also noted that “an employee would not be prohibited from consulting with a business that happens to hold a Postal Service contract when the employee’s consulting work is not related to that contract and does not have any other postal connection.” 60 FR 15701. In other words, the prohibition is focused on, and has been consistently applied by the Postal Service to, the outside activity of the *employee*, not the activity of the outside *employer*. As currently written, the § 7001.102(a)(1)(iii) prohibition could be read to cover both the employee and the outside employer because of the introductory phrasing “with or for a person, including

oneself.” In order to more clearly state that the prohibition is tied to the type of work the employee will do for an outside employer or on their own, the Postal Service proposes to modify this language in the restriction, found at renumbered § 7001.102(a)(1), to state that an employee cannot engage in outside employment or business activities “that involve providing” certain consultation, advice, or subcontracting services.

Second, the Postal Service has revised current § 7001.102(a)(1)(iv) by separating the two distinct prohibitions contained therein: (1) the operation of a commercial mail receiving agency and (2) the delivery outside the mails of any type of mailable matter, except daily newspapers. These prohibitions, now at renumbered § 7001.102(a)(2), include revised language to more clearly state that an employee is prohibited from engaging in outside employment or business activities “with, for, or as a person engaged in” the activity; for consistency, related language in the prior approval section at § 7001.102(b)(1)(ii) has similarly been updated. No substantive change is intended.

D. Amendment of § 7001.102 Relating to Outside Employment or Business Activities with Certain Subsidiaries

As described above, current § 7001.102(a)(1)(iv) (renumbered as § 7001.102(a)(2)) prohibits employees from engaging in outside employment or business activities with, for, or as persons engaged in certain categories of activities. The Supplemental Standards do not currently include a definition of “person.” Therefore, the definition of that term set forth in the Standards (5 CFR 2635.102(k)) applies to the Supplemental Standards. That definition provides that a “person” includes, among others, a corporation and each subsidiary it controls (“corporate subsidiary provision”). Consequently, when a corporation is engaged in an activity covered by renumbered § 7001.102(a)(2), employees are not only currently prohibited from engaging in outside employment or business activities with or for the corporation, but also with or for a subsidiary, regardless of whether the subsidiary is also engaged in a covered activity. For the reasons discussed below, the Postal Service proposes to add a provision to § 7001.102(b) that would permit an employee to request approval to engage in outside

employment or business activities with certain subsidiaries of entities engaged in activities covered by renumbered § 7001.102(a)(2).

In connection with the initial issuance of the Supplemental Standards, the Postal Service discussed the reasons for the outside activity prohibitions in § 7001.102(a). See 60 FR 15700-15702. The Postal Service explained that reasons for the prohibitions included that covered outside employment and business activities could lead members of the public to be concerned that the employees were using knowledge or influence gained through their official positions to benefit their outside employers or business associates, or might lead members of the public to question the employees' loyalty to the Postal Service, thereby undermining public confidence in the integrity of postal operations.

The Postal Service has now concluded that application of the corporate subsidiary provision to the proposed amended § 7001.102(a)(2) would be unduly restrictive in circumstances in which a corporation is engaged in a covered activity, but a subsidiary with which an employee desires to engage in employment or business activities is not. The Postal Service has determined that the concerns raised in connection with the initial issuance of the Supplemental Standards are oftentimes not present when an employee would like to engage in business activities with or for a company that is not engaged in any of the activities outlined in § 7001.102(a)(2), but happens to be the subsidiary of a company engaged in such activities. In making this determination, the Postal Service no longer considers there to be a divided loyalty question with an employee who would like to work for a subsidiary that is not engaged in the activities outlined in § 7001.102(a)(2), even though the parent corporation is engaged in such activities. This is because the focus of § 7001.102(a)(2) is on the business activities of the subsidiary itself. When a subsidiary engages in a wholly separate line of trade than its parent corporation, the Postal Service is not concerned with the subsidiary's line of trade if that line of trade does not fall under the ambit of § 7001.102(a)(2).

In order to mitigate the undue restrictiveness of renumbered § 7001.102(a)(2), the Postal Service proposes to add a subsection, § 7001.102(b)(2), that provides an exception for certain subsidiaries. This provision provides that an employee who wishes to engage in outside

employment or activities with an entity that does not itself engage in the activities outlined in § 7001.102(a)(2), but is the subsidiary of an entity that engages in those activities, should follow the prior approval process laid out in § 7001.102(b)(3). Approval would allow the employee to engage in outside employment or activity with a subsidiary that would otherwise be restricted by renumbered § 7001.102(a)(2) because of the corporate subsidiary provision. For example, Employee A would like to get a second job as a delivery driver for Amazon Logistics. Employee B would like to earn money on the video streaming website Twitch. Both Amazon Logistics and Twitch are subsidiaries of Amazon. Employee A is prohibited from working for Amazon Logistics because that subsidiary delivers mailable matter outside of the mail, and § 7001.102(b)(2) does not contemplate that approval can be granted for this type of subsidiary employment. However, Employee B may request prior approval to earn money on the website Twitch because that subsidiary is engaged in creating digital media content, which is not prohibited under § 7001.102(a)(2). An example has been added to this subsection identifying a scenario in which an employee may request prior approval for outside employment with a subsidiary.

E. Amendment of § 7001.102(a)(2) to Modify the Activities in Which Employees Are Prohibited From Engaging While on Duty, in Uniform, at Any Postal Facility, or Using Postal Equipment

Section 7001.102(a)(2) of the Supplemental Standards currently prohibits employees from engaging in any sales activity, including the solicitation of business or the receipt of orders, for themselves or any other persons while on duty or in uniform, or at any postal facility. The Postal Service proposes to amend this provision, now at renumbered § 7001.102(a)(3), to add a prohibition on using postal equipment to engage in such sales activity. The Postal Service additionally proposes to amend this provision to also prohibit employees from engaging in fundraising (as defined in the Standards) or for-profit business activities for themselves or any other persons while on duty, in uniform, at any postal facility, or using any postal equipment (but not including fundraising at a postal facility as permitted in connection with the Combined Federal Campaign (CFC) under 5 CFR part 950). The added reference to fundraising is

intended to highlight an existing restriction in the Standards (see 5 CFR 2635.808), and to improve clarity and reduce confusion for employees. It is not intended to create a separate, new restriction. Examples have been added to § 7001.102(a)(3) demonstrating these prohibitions.

The Postal Service often encounters situations in which employees who are involved in outside sales activities engage in those activities while on duty, in uniform, on postal property, and/or using postal equipment. The Postal Service has routinely found that by engaging in those activities while on duty, in uniform, on postal property, and/or using postal equipment, the employees violate the misuse of public office for private gain, misuse of Government property, and/or misuse of official time provisions of the Standards (5 CFR part 2635, subpart G).

The Standards define “fundraising” to include, among other things, the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through the solicitation of funds or sale of items. See 5 CFR 2635.808(a)(1)(i). The Postal Service often encounters situations in which employees who are involved in outside fundraising as defined in the Standards or for-profit business activities engage in those activities while on duty, in uniform, on postal property, and/or using postal equipment. The Postal Service has routinely found that by engaging in those activities while on duty, in uniform, on postal property, and/or using postal equipment, the employees violate the misuse of public office for private gain, misuse of Government property, and/or misuse of official time provisions of the Standards (5 CFR part 2635, subpart G).

In addition, the Postal Service’s Conduct on Postal Property (COPP) regulations prohibit, with some exceptions, any person entering in or on property under the charge and control of the Postal Service from soliciting alms or contributions, or soliciting or vending for commercial purposes. See 39 CFR 232.1(a), (h)(1). The Postal Service has also routinely found that by engaging in outside sales activities, outside fundraising as defined in the Standards, or for-profit business activities on postal property, employees violate those COPP regulations.

In consideration of all these factors, the Postal Service wishes to explicitly incorporate in the Supplemental Standards a restriction on engaging in these activities.

F. Amendment of § 7001.102 to Provide for the Requirements for OIG Employees to Report and/or Obtain Prior Approval to Engage in Outside Employment or Business Activities

The Postal Service proposes to amend § 7001.102 to add a provision at § 7001.102(c) providing for the requirements for when OIG employees must report or obtain prior approval to engage in outside employment or business activities. The amendment of § 7001.102 will result in the current definitions located at § 7001.102(c) being renumbered to § 7001.102(d).

The proposed amendment requires all OIG employees to provide notice to, and OIG Special Agents and Criminal Investigators to obtain approval from, the OIG's Office of General Counsel before engaging in compensated or uncompensated outside employment or business activities, including:

- (1) any knowing sale or lease of real estate to the Postal Service or to a Postal Service employee or contractor, regardless of the frequency of such sales or leases or whether the sale or lease is at fair market value;
- (2) any ownership or control of a publicly-accessible online or physical storefront; and
- (3) volunteer activities, if they regularly exceed 20 hours per week or when the employee holds an officer position in the organization.

Employees' outside employment or business activities may not interfere with their ability or availability to perform OIG duties. The OIG's Office of General Counsel will analyze the reports of employees engaged in outside employment or business activities to ensure that they are warned of potential conflicts of interest or loss of impartiality. Reporting these types of outside activities is necessary for OIG employees (as opposed to regular Postal Service employees) due to the nature of the OIG's work and the OIG's desire to avoid even the appearance of impropriety. As an oversight entity, the OIG strives to maintain an elevated standard of conduct that serves as an example to its Postal Service colleagues. The OIG's reputation is of paramount importance in its relationship with the Postal Service, Congress, and other stakeholders. Accordingly, outside financial entanglements that could impact the impartiality of OIG agents and auditors are of particular concern, including the following:

1. Real Estate

Employees must report the knowing sale or lease of real estate to the Postal Service or to a Postal Service employee or contractor due to the high risk of a conflict of interest or loss of impartiality inherent in such a large (in the case of a sale) or ongoing (in the case of a lease) financial transaction. For example, an audit manager who leases land to the entity he or she is auditing is likely to have actual or apparent independence concerns that would interfere with his or her duties.

2. Commercial Business

Because virtual businesses can be accessed at any time, including during employees' official work hours, employees who have ownership or control of publicly-accessible online storefronts will be advised that they are prohibited from using Government resources, including property, or time to conduct their outside businesses. The Postal Service has no de minimis exception for using Government resources or time to conduct outside employment or business activities. In the case of ownership or control of physical storefronts, the same prohibition on using Government resources or time applies.

3. Volunteer Activities

Limited volunteer activities seldom pose a significant risk of violating 18 U.S.C. 208 or 5 CFR 2635.502. However, regular volunteer work of more than 20 hours per week or holding an officer position within an outside organization must be reported to ensure that employees' close relationships to the outside entities would not cause a reasonable person to question the employees' impartiality. Accordingly, employees who engage in volunteer work may not use Government resources or time, including – per Postal Service policy – sick leave, to engage in their volunteer work and may not participate personally and substantially in OIG particular matters that would directly and predictably affect the organization with which they volunteer. USPS OIG believes that an OIG employee's participation in those matters would cause a reasonable person to question the OIG employee's impartiality in the matter. See 5 CFR 2635.502. Two examples have been provided in § 7001.102(c)(1) regarding the reporting of

volunteer activities. Employees may submit questions about reporting of volunteer activities to the OIG's Office of General Counsel.

4. Law Enforcement Officer Approval Requirement

Law Enforcement Officer involvement in outside employment or business activities can pose additional challenges that must be coordinated with OIG management and legal counsel to ensure that the Law Enforcement Availability Pay (LEAP) requirements of 5 U.S.C. 5545a and 5 CFR 550.181 through 550.186 can be balanced against the outside activity. The Postal Service proposes to add new § 7001.102(c)(2) to require that such individuals in the OIG – Special Investigators and Criminal Investigators – obtain prior approval for the outside activities enumerated in § 7001.102(c)(1). For these employees, their outside employment and business activities often draw upon their OIG law enforcement training and experience, requiring them to carry firearms, which creates liability and safety concerns. In addition, the OIG must ensure that Special Agents and Criminal Investigators are available to carry out their law enforcement duties during exigent circumstances. Special Agents receive LEAP and are required to be available 50 hours per week. A conflict of interest review must be conducted to ensure that Special Agents are aware of these potential liability issues and duty requirements that are particular to their law enforcement profession. Non-investigators do not have LEAP requirements or potential firearm liability issues because they are not required to carry firearms as part of their OIG duties. Accordingly, the proposed amendment imposes the additional requirement that Special Agents and Criminal Investigators request and obtain written approval prior to engaging in outside employment or business activities which they are required to report under the proposed amendment.

G. Amendment of § 7001.102 to Revise and Add Definitions

Section 7001.102(c) of the Supplemental Standards, which will be renumbered to § 7001.102(d), currently provides definitions of certain terms used in § 7001.102. The Postal Service proposes to amend this section as follows to include new definitions, which will result in the renumbering of existing definitions in this section:

1. Commercial Mail Receiving Agency

Current § 7001.102(a)(1), proposed to be renumbered to § 7001.102(a)(2)(i), prohibits employees from engaging in outside employment or business activities with or for persons engaged in the operation of a commercial mail receiving agency registered with the Postal Service. The Supplemental Standards do not currently include a definition of a “commercial mail receiving agency.” The Postal Service proposes to amend the definitions section of § 7001.102 to define a “commercial mail receiving agency” as a private business that acts as the mail receiving agent for specific clients, and explain that the business must be registered with the post office responsible for delivery to the commercial mail receiving agency.

2. A Person Engaged in the Delivery Outside the Mails of Any Type of Mailable Matter

Section 7001.102(a)(1), proposed to be renumbered to § 7001.102(a)(2)(ii), currently prohibits employees from engaging in outside employment or business activities with or for persons engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers. The Supplemental Standards do not currently include a definition of “a person engaged in the delivery outside the mails of mailable matter.” The Postal Service has found that employees are at times uncertain as to which of the different types of non-postal delivery services current § 7001.102(a)(1) applies.

The Postal Service proposes to amend the definitions section of § 7001.102 to define “a person engaged in the delivery outside the mails of any type of mailable matter” as a person who is engaged in the delivery outside the mails of any letter, card, flat, or parcel eligible to be accepted for delivery by the Postal Service. An example has been added to renumbered § 7001.102(a)(2)(ii) identifying four global companies that currently qualify as “a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers” (i.e., United Parcel Service (UPS), Federal Express (FedEx), Amazon, and DHL). Other businesses exist that qualify as such a person, including but not limited to, regional companies that deliver mailable matter that is not daily newspapers.

3. A Person Having Interests Substantially Dependent Upon, or Potentially Affected to a Significant Degree By, Postal Rates, Fees, or Classifications

Section 7001.102(b) currently requires employees to obtain prior approval to engage in outside employment or business activities with or for persons whose interests are substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications. The definitions section of § 7001.102 currently defines “a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications” to include, among other persons, a person who is engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services.

The Postal Service proposes to amend this definition to clarify the employees who qualify in the current e-commerce environment as a person engaged in a business that depends substantially upon the mails for the delivery of goods or services (“a person engaged in a mail delivery-dependent business”). Since the initial issuance of the Supplemental Standards in 1995, the internet has come to provide a new avenue for the sale of goods and services to the public, including by persons who did not previously engage in sales activity, with many of those items shipped to purchasers using the Postal Service. The Postal Service does not intend that employees will qualify as a person engaged in a mail delivery-dependent business unless they operate a commercial business that utilizes the Postal Service as its primary shipper and can be expected to earn gross revenue exceeding \$10,000 from utilizing the mails in its current fiscal year.

The Postal Service proposes to remove the reference in this definition to “a person who is engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services” and replace it with reference to a person who is engaged in a commercial business that:

(1) primarily utilizes the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; and

(2) can be expected to earn gross revenue exceeding \$10,000 from utilizing the mails during the business’s current fiscal year.

If it was reasonable to have expected that a business would not exceed the \$10,000 threshold during its fiscal year, a person will not meet the proposed definition if the business in fact exceeds the threshold at the end of the fiscal year. However, this fact must be taken into account when determining whether the business can be expected to exceed the threshold in its subsequent fiscal year.

In addition, examples have been added to this definition of persons who are and are not engaged in a mail delivery-dependent business in the e-commerce environment.

4. Second-Class Rates of Postage Reference and Postal Rate Commission

Reference

The Postal Service also proposes to amend the definition of “a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications” in § 7001.102 to change the reference in that provision from “a publication mailed at second-class rates of postage” to “a publication mailed at Periodicals rates of postage.” As part of revisions to the Domestic Mail Classification Schedule (the predecessor to the current Mail Classification Schedule), second-class mail was renamed Periodicals. See 61 FR 10068, 10114, 10123-24. In addition, the Postal Service proposes to amend the definition of “a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications” in § 7001.102 to change the reference in that provision from “Postal Rate Commission” to “Postal Regulatory Commission.” The Postal Enhancement and Accountability Act redesignated the Postal Rate Commission as the Postal Regulatory Commission. See Pub. L. 109-435, Title VI, § 604, 120 Stat. 3198, 3241-42 (2006).

5. A Person Having Interests Substantially Dependent Upon Providing Goods or Services to, or For Use in Connection With, the Postal Service

Section 7001.102(b) currently requires employees to obtain prior approval to engage in outside employment or business activities with or for persons whose interests are substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service. The definitions section of § 7001.102 currently defines “a person having interests

substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service” to include, among other persons, a person who provides goods or services under contract with the Postal Service that:

(1) can be expected to provide revenue exceeding \$100,000 over the term of the contract;
and

(2) provides 5% or more of the person’s gross income for the person’s current fiscal year.

The Postal Service proposes to amend this definition to clarify that a person who holds more than one contract with the Postal Service to provide goods or services to, or for use in connection with, the Postal Service meets the “revenue exceeding \$100,000” criteria in paragraph (1) above if the person’s contracts in total can be expected to provide revenue exceeding \$100,000 over the terms of the contracts.

The Postal Service additionally proposes to amend this definition to remove the “5% of gross income” criteria in paragraph (2) above. The Postal Service’s experience has been that in many cases it does not have access to information that would indicate whether a contract to provide goods or services to, or for use in connection with, the Postal Service provides 5% or more of the contractor’s gross income for the contractor’s current fiscal year.

Section 7001.102 also currently defines “a person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service” to include a person substantially engaged in the business of preparing items for others for mailing through the Postal Service. An example has been added to renumbered § 7001.102(d)(5) of such a person.

H. Amendment of Part 7001 to Prohibit the Governors From Having or Controlling Certain Financial Interests

The Postal Service’s organizational structure includes nine Governors, who are appointed by the President and confirmed by the Senate. See 39 U.S.C. 202(a). The nine Governors, along with the Postmaster General and Deputy Postmaster General, constitute the Board of Governors. See 39 U.S.C. 202(a), (c), (d). The Board of Governors directs the exercise of the powers of the Postal Service, directs and controls postal expenditures, reviews

postal practices and policies, and performs other functions and duties as prescribed by the Postal Reorganization Act, as amended, codified in 39 U.S.C. See 39 U.S.C. 202(a), 205(a). In addition, certain matters are reserved for decision by the nine Governors. See 39 CFR 3.4.

On occasion, Postal Service Governors may be called upon to act upon postal matters that would have a direct and predictable effect on the financial interests of a postal competitor or postal lessor. In those cases, such involvement would be prohibited by the criminal conflict of laws (18 U.S.C. 208) to the extent that a Governor (or a person or entity whose interests are imputed to the Governor) has a financial interest in the postal competitor or postal lessor. Recognizing that this is not the case for all postal matters, the Postal Service proposes to amend Part 7001 to nevertheless prohibit Governors, their spouses, and minor children from directly or indirectly holding financial interests in postal competitors or publicly-traded postal lessors, and Governors from actively controlling the acquisition or holding of financial interests in postal competitors or publicly-traded postal lessors on behalf of any entity, because doing so would cause an appearance of a lack of impartiality or objectivity with which postal programs are administered.

The Postal Service proposes to amend Part 7001 of the Supplemental Standards to include new § 7001.104 regarding prohibited financial interests of the Governors as follows:

1. Financial Interest in a Postal Competitor

The Postal Service proposes to add a provision at § 7001.104(a)(1)(i) prohibiting Postal Service Governors, their spouses, and minor children from directly or indirectly acquiring or holding any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers (“postal competitor”), with some exceptions. Pursuant to § 7001.104(a)(2), Postal Service Governors also would be prohibited from actively controlling the acquisition of or the holding of any financial interest in a postal competitor on behalf of an entity whose financial interests are imputed to the Governor under 18 U.S.C. 208. A Governor actively controls the acquisition or holding of financial interests on behalf of an entity if he or she selects or dictates the entity’s investments, such as stocks, bonds, commodities, or funds. A Governor does not actively control the acquisition or holding of financial interests on behalf of an

entity if he or she merely directs the investment strategy of the entity, hires the entity's financial manager(s) who selects the entity's investments, or designates another employee of the entity to select the entity's investments. A Governor may have such investment authority when serving as an officer, director, trustee, general partner, or employee of an entity. Examples have been provided of when a Governor does and does not actively control the acquisition or holding of financial interests on behalf of an entity.

While the Postal Service is an independent establishment of the executive branch of the Government of the United States, its mission includes the provision to the public for a fee of services for which it has private sector competitors, i.e., private businesses engaged in the delivery outside the mails of mailable matter, including but not limited to, United Parcel Service (UPS), Federal Express (FedEx), Amazon, and DHL. This definition of "a person engaged in the delivery outside the mails of any type of mailable matter" is the same definition of that term that is included in the definitions section of § 7001.102 applicable to the prohibition on employees engaging in outside employment or business activities with or for such persons.

The purpose of the proposed amendment is to avoid even the appearance of impropriety that may be created by a Governor or his or her spouse or minor child holding a financial interest in a postal competitor, or a Governor actively controlling the acquisition or holding of a financial interest in a postal competitor on behalf of an entity whose financial interests are imputed to the Governor under the criminal conflict of interest laws (18 U.S.C. 208). A Governor or his or her spouse or minor child holding such a financial interest might lead members of the public to question the Governor's loyalty to the Postal Service, thereby undermining public confidence in the integrity of postal operations. Likewise, members of the public might question the Governor's loyalty to the Postal Service if an entity whose financial interests are treated as his or her own, and for which the Governor actively controls investment decisions, has a financial interest in a postal competitor. These concerns are not presented by a Governor or his or her spouse or minor child holding a financial interest in a private business engaged in the delivery of daily newspapers, or a Governor actively controlling a financial interest in such a private business on behalf of an entity, which are not prohibited.

2. Financial Interest in a Publicly-Traded Postal Lessor

The Postal Service proposes to add a provision at § 7001.104(a)(1)(ii) prohibiting Postal Service Governors, their spouses, and minor children from directly or indirectly acquiring or holding any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service (“postal lessor”), with some exceptions. Pursuant to § 7001.104(a)(2), Postal Service Governors also would be prohibited from actively controlling the acquisition of or the holding of any financial interest in a postal lessor on behalf of an entity whose financial interests are imputed to the Governor under 18 U.S.C. 208. A Governor actively controls the acquisition or holding of financial interests on behalf of an entity if he or she selects or dictates the entity’s investments, such as stocks, bonds, commodities, or funds. A Governor does not actively control the acquisition or holding of financial interests on behalf of an entity if he or she merely directs the investment strategy of the entity, hires the entity’s financial manager(s) who selects the entity’s investments, or designates another employee of the entity to select the entity’s investments. A Governor may have such investment authority when serving as an officer, director, trustee, general partner, or employee of an entity. Examples have been provided of when a Governor does and does not actively control the acquisition or holding of financial interests on behalf of an entity.

In order to accomplish its mission of providing adequate and efficient postal services nationwide, the Postal Service maintains retail (i.e., post offices) and other facilities across the country. In most cases, the Postal Service leases, rather than owns, the real property where its facilities are located.

The Postal Service’s lease agreements are mainly with non-governmental lessors, including, at present, one publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service. While the interests of such an entity are at times aligned with the Postal Service’s interests, it also has interests that do or may conflict with the Postal Service’s interests, such as the terms of the lease agreement and how those terms are implemented.

The purpose of the proposed amendment is to avoid even the appearance of impropriety that may be created by a Governor or his or her spouse or minor child holding a financial

interest in a postal lessor, or a Governor actively controlling the acquisition or holding of a financial interest in a postal lessor on behalf of an entity whose financial interests are imputed to the Governor under the criminal conflict of interest laws (18 U.S.C. 208). A Governor or his or her spouse or minor child having such a financial interest might lead members of the public to question the Governor's loyalty to the Postal Service, thereby undermining public confidence in the integrity of postal operations, including the postal real estate leasing program. Likewise, members of the public might question the Governor's loyalty to the Postal Service if an entity whose financial interests are treated as his or her own, and for which the Governor actively controls investment decisions, has a financial interest in a postal lessor.

3. Exceptions, Time Limits, Disqualifications, and Waivers

Under an exception to the proposed prohibitions at § 7001.104(b), Governors, their spouses, and minor children are not prohibited from directly or indirectly acquiring or holding, and Governors are not prohibited from actively controlling on behalf of any entity, any financial interest in any publicly-traded or publicly-available mutual fund (as defined in 5 CFR 2640.102(k)) or other collective investment fund, including a widely-held pension or other retirement fund, that includes any financial interest in a postal competitor or postal lessor described in the proposed amendment, so long as certain conditions are met.

The proposed amendment also provides in proposed § 7001.104(c) the time limit by which any financial interest in a postal competitor or postal lessor prohibited by the proposed amendment generally must be divested, as well as the time limits for reporting and divesting the following:

(1) a financial interest directly or indirectly held by a Governor or his or her spouse or minor child, or a financial interest actively controlled by a Governor on behalf of any entity, that becomes prohibited subsequent to the Governor's confirmation;

(2) a financial interest in a postal competitor or postal lessor described in the proposed amendment that was acquired by the Governor or his or her spouse or minor child without specific intent (such as through marriage, inheritance, or gift) subsequent to the Governor's confirmation; and

(3) a financial interest in a postal competitor or postal lessor described in the proposed amendment that was acquired by an entity whose financial interests are actively controlled by a Governor without specific intent (such as through a gift) subsequent to the Governor's confirmation.

The proposed amendment further provides that pending any required divestiture of a prohibited financial interest provided for in the proposed amendment, a Governor must disqualify himself or herself from participating in particular matters involving or affecting the prohibited financial interest, and that disqualification is accomplished by not participating in the particular matter.

The proposed amendment at § 7001.104(d) additionally authorizes the Postal Service's DAEO, upon good cause shown by a Governor, to grant a written waiver to the Governor of any prohibited financial interest described in the proposed amendment, provided that the DAEO finds that:

(1) the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law; and

(2) under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the Governor's misuse of position or loss of impartiality or otherwise to ensure confidence in impartiality or objectivity with which postal programs are administered.

The DAEO may impose appropriate conditions for granting of the waiver, such as requiring the Governor to execute a written statement of disqualification.

The waiver is intended, in appropriate cases, to lessen the burden that the prohibitions on holding or controlling the relevant financial interests may impose on, as applicable, the Governors, their spouses, or minor children while ensuring that they do not hold or control financial interests that may interfere with the objective and impartial performance by the Governors of their official duties.

III. MATTERS OF REGULATORY PROCEDURE

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553(b), (c)), the Postal Service invites comments on these proposed rules.

Lists of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the United States Office of Government Ethics, proposes to amend 5 CFR part 7001 as follows:

PART 7001 – SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

1. The authority citation for 5 CFR part 7001 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 401; E.O. 12674, 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.802, and 2635.803.

2. Revise § 7001.102 to read as follows:

§ 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities that involve providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract;

(2) Except as permitted by paragraph (b)(2) of this section, engage in outside employment or business activities with, for, or as a person engaged in:

- (i) The operation of a commercial mail receiving agency registered with the Postal Service;
- or
- (ii) The delivery outside the mails of any type of mailable matter, except daily newspapers.

Example to paragraph (a)(2)(ii): United Parcel Service (UPS), Federal Express (FedEx), Amazon, or DHL offers a part-time job to a postal employee. Because UPS, FedEx, Amazon and DHL are persons engaged in the delivery outside the mails of mailable matter (as defined in paragraph (c)(2) of this section) that is not daily newspapers, the employee may not engage in employment with UPS, FedEx, Amazon, or DHL in any location in any capacity while continuing employment with the Postal Service in any location in any capacity. If the employee chooses to work for UPS, FedEx, Amazon, or DHL, the employee must end his or her postal employment before commencing work for that company.

(3) Engage in any fundraising (as defined in 5 CFR 2635.808(a)(1)), for-profit business activity, or sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, at any postal facility, or using any postal equipment. This paragraph does not prohibit an employee from engaging in fundraising at a postal facility as permitted in connection with the Combined Federal Campaign (CFC) under 5 CFR part 950.

Example 1 to paragraph (a)(3): An employee volunteers at a local animal shelter (a non-profit organization) which is having its annual fundraising drive. The employee may not solicit funds or sell items to raise funds for the animal shelter while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 2 to paragraph (a)(3): Outside of his postal employment, an employee operates a for-profit dog-walking business. The employee may not engage in activities relating to the operation of his business while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 3 to paragraph (a)(3): Outside of her postal employment, an employee has a job as a sales associate for a cosmetics company. The employee may not solicit sales or receive orders for the cosmetic company from any person while on duty, in uniform, at any postal facility, or using any postal equipment.

(b) *Prior approval for outside employment and business activities.*

(1) *When prior approval required.* A Postal Service employee shall obtain approval from the Postal Service's Ethics Office in accordance with paragraph (b)(3) of this section prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service;

(ii) Engaging in outside employment or business activities with, for, or as a person who has interests that are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service; or

(iii) Engaging in outside employment or business activities with or for any Highway Contract Route (HCR) contractor.

(2) *When prior approval may be requested for prohibited outside employment and activities.*

If an entity with which an employee wishes to engage in outside employment or business activities is a subsidiary of an entity that is engaged in one the activities described in (a)(2) of this section, but does not itself engage in any those activities, the employee may request approval from the Postal Service's Ethics Office to engage in such activity. The employee's request should follow the procedures of (b)(3) of this section, and will be evaluated under the standard set forth in (b)(4) of this section.

Example to paragraph (b)(2): A postal employee who wishes to engage in outside employment with Whole Foods Market may submit a request to engage in that activity to the Postal Service's Ethics Office. Although Whole Foods Market is a subsidiary of Amazon, it is engaged in the supermarket business, not in the delivery outside the mails of mailable matter.

(3) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service's Ethics Office. The request shall be accompanied by a statement from the employee's supervisor briefly

summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

- (i) A brief description of the employee's official duties;
- (ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;
- (iii) The type of employment or business activities in which the outside employer, if any, is engaged;
- (iv) The type of services to be performed by the employee in connection with the outside employment or business activities;
- (v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and
- (vi) Any additional information requested by the Postal Service's Ethics Office that is needed to determine whether approval should be granted.

(4) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activities will not involve conduct prohibited by statute or federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Special rules for outside employment or business activities of OIG employees.—(1)*
When reporting required. A Postal Service Office of Inspector General (OIG) employee shall report compensated and uncompensated outside employment or business activities to the OIG's Office of General Counsel, including:

- (i) Any knowing sale or lease of real estate to the Postal Service or to a Postal Service employee or contractor, regardless of the frequency of such sales or leases or whether the sale or lease is at fair market value;
- (ii) Any ownership or control of a publicly-accessible online or physical storefront; and

(iii) Volunteer activities, if they regularly exceed 20 hours per week or when the employee holds an officer position in the organization.

Example 1 to paragraph (c)(1)(iii): An OIG employee occasionally volunteers with a domestic violence non-profit. The employee's volunteer duties are generally limited to 5 hours per week. The employee is not an officer of the organization. One weekend the employee helps to build a new home for a family, which takes a combined 22 hours. The employee is not required to report those volunteer activities because the employee is not an officer and the employee's volunteer activities do not *regularly* exceed 20 hours per week.

Example 2 to paragraph (c)(1)(iii): An OIG employee is a Scoutmaster for his child's local scouting group. The children meet for an hour each week and go on 4-hour hikes one weekend per month. Though "Scoutmaster" may involve leadership, it is not an officer position within the non-profit entity and need not be reported.

(2) *When prior approval required.* A Special Agent or Criminal Investigator shall also request and obtain written approval prior to engaging in outside employment or business activities which he or she is required to report under paragraph (c)(1) of this section. A request for approval shall be submitted to the OIG's Office of General Counsel, which will be reviewed under the same standard stated in paragraph (b)(3) of this section.

(3) *Implementation guidance.* The OIG's Office of General Counsel may issue internal instructions governing the submission of requests for approval of outside employment, business activities, and volunteer activities. The instructions may exempt categories of employment, business activities, or volunteer activities from the reporting and prior approval requirements of this section based on a determination that those activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The OIG's Office of General Counsel may include in these instructions examples of outside activities that are permissible or impermissible consistent with this part and 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly-traded shares of a corporation.

(2) *Commercial mail receiving agency* means a private business that acts as the mail receiving agent for specific clients. The business must be registered with the post office responsible for delivery to the commercial mail receiving agency.

(3) *A person engaged in the delivery outside the mails of any type of mailable matter* means a person who is engaged in the delivery outside the mails of any letter, card, flat, or parcel eligible to be accepted for delivery by the Postal Service.

(4) *A person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at Periodicals rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons through the mails;

(iii) Engaged in a commercial business that:

(A) Primarily utilizes the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; and

(B) Can be expected to earn gross revenue exceeding \$10,000 from utilizing the mails during the business's current fiscal year; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Regulatory Commission.

Example 1 to paragraph (d)(4)(iii): An employee operates a business which sells handmade wooden bowls on its website and other e-commerce websites and uses the Postal Service as its primary shipper. The employee's business can be expected to earn gross revenue of more than

\$10,000 from utilizing the mails during the business's current fiscal year. The employee's business is "a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications" because it is a commercial business that primarily utilizes the mails for the delivery of its goods and the business can be expected to earn gross revenue exceeding \$10,000 from utilizing the mails during its current fiscal year.

Example 2 to paragraph (d)(4)(iii): An employee knits scarves as a hobby, most of which she gives to family and friends, but she occasionally sells extra scarves on an e-commerce website and uses the Postal Service as her primary shipper. The employee does not expect to receive more than \$10,000 from utilizing the mails during the current calendar year in which she sells the scarves. The employee is not "a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications" because she is not engaged in a commercial business that can be expected to earn gross revenue from utilizing the mails exceeding \$10,000 during its current fiscal year.

(5) A person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service includes a person:

- (i) Providing goods or services under contract(s) with the Postal Service that in total can be expected to provide revenue exceeding \$100,000 over the term(s) of the contract(s); or
- (ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

Example to paragraph (d)(5)(ii): A mailing house that sorts and otherwise prepares for its clients large volumes of advertising, fundraising, or political mail for mailing to prospective customers, donors, or voters through the Postal Service is "a person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service" because it is substantially engaged in the business of preparing items for others for mailing through the Postal Service.

3. Add § 7001.104 to read as follows:

§ 7001.104 Prohibited financial interests of the Governors of the United States Postal Service.

(a) *General prohibitions.*—(1) No Governor of the United States Postal Service or his or her spouse or minor child shall acquire or hold, directly or indirectly:

(i) Any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(ii) Any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service.

(2) No Governor shall actively control the acquisition of or the holding of any financial interest described in paragraph (a)(1)(i) or (ii) of this section on behalf of any entity whose financial interests are imputed to the Governor under 18 U.S.C. 208. A Governor actively controls the financial interests of an entity if he or she selects or dictates the entity's investments, such as stocks, bonds, commodities, or funds. A Governor does not actively control the financial interests of an entity if he or she merely directs the investment strategy of the entity, hires the entity's financial manager(s) who selects the entity's investments, or designates another employee of the entity to select the entity's investments. A Governor may have such investment authority when serving as an officer, director, trustee, general partner, or employee of an entity.

Example 1 to paragraph (a)(2): A Governor is also the chief executive officer (CEO) of a life insurance company. The company's policy is for: (1) the board of directors to determine the overall investment strategy for the company's excess cash, (2) an internal team to recommend to the CEO specific financial instruments in which to invest the company's excess cash to implement the board's overall investment strategy, and (3) the CEO to approve or disapprove of the internal team's specific investment recommendations. The Governor actively controls the financial interests of the life insurance company in his position as CEO of the company.

Example 2 to paragraph (a)(2): A Governor is also on the board of directors of an investment company. The company's policy is for: (1) the board of directors to determine the overall investment strategy for the company's excess cash, (2) the board of directors to choose an external investment manager to select and manage day-to-day the specific financial instruments in which the company's excess cash is invested to implement the board's overall

investment strategy, and (3) the CEO and other company management official to oversee the investment management process, including periodic review of the company's investment portfolio. The Governor does not actively control the financial interests of the investment company in her position on the board of directors.

(b) *Exception.* Paragraph (a) of this section does not prohibit a Governor or his or her spouse or minor child from directly or indirectly acquiring or holding, or a Governor from actively controlling on behalf of any entity, any financial interest in any publicly-traded or publicly-available mutual fund (as defined in 5 CFR 2640.102(k)) or other collective investment fund, including a widely-held pension or other retirement fund, that includes any financial interest described in paragraph (a)(1)(i) or (ii) of this section, provided that:

(1) Neither the Governor nor his or her spouse exercises active control over the financial interests held by the fund; and

(2) The fund does not have a stated policy of concentrating its investments in, as applicable, persons engaged in the delivery outside the mails of mailable matter, except daily newspapers, or persons engaged primarily in the business of leasing real property to the Postal Service.

(c) *Reporting of prohibited financial interest and divestiture.*—(1) *General.* Any financial interest prohibited by paragraph (a) of this section shall be divested within 90 calendar days of confirmation by the Senate of the Governor's nomination, or as soon as possible thereafter if there are restrictions on divestiture.

(2) *Newly-prohibited financial interests following confirmation.* If a financial interest directly or indirectly held by a Governor or his or her spouse or minor child, or a financial interest actively controlled by a Governor on behalf of any entity, becomes prohibited subsequent to the Governor's confirmation:

(i) The Governor shall report the prohibited financial interest to the Postal Service's Designated Agency Ethics Official (DAEO) within 30 calendar days of the DAEO informing the Governors that such financial interests have become prohibited; and

(ii) The prohibited financial interest shall be divested within 90 calendar days of the DAEO informing the Governors that such financial interests have become prohibited, or as soon as possible thereafter if there are restrictions on divestiture.

(3) *Prohibited financial interests acquired without specific intent following confirmation.*—(i) If a Governor or his or her spouse or minor child acquires a financial interest prohibited by paragraph (a)(1) of this section without specific intent to acquire it (such as through marriage, inheritance, or gift) subsequent to the Governor's confirmation:

(A) The Governor shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(ii) If an entity whose financial interests are actively controlled by a Governor acquires a financial interest described in paragraph (a)(1)(i) or (ii) of this section without specific intent to acquire it (such as through a gift) subsequent to the Governor's confirmation:

(A) The Governor shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(4) *Disqualification from participating in particular matters pending divestiture.* Pending any required divestiture of a prohibited financial interest provided for in paragraph (c) of this section, a Governor shall disqualify himself or herself from participating in particular matters involving or affecting the prohibited financial interest. Disqualification is accomplished by not participating in the particular matter.

(d) *Waiver of prohibited financial interests.* For good cause shown by a Governor, the Postal Service's DAEO may grant a written waiver to the Governor of any prohibited financial interest described in paragraph (a), (c)(2), or (c)(3) of this section; provided that the DAEO finds that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that under the particular circumstances, application of the prohibition is not necessary to avoid the

appearance of the Governor's misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality or objectivity with which the Postal Service's programs are administered. The DAEO may impose appropriate conditions for granting of the waiver, such as requiring the Governor to execute a written statement of disqualification.

(e) *Definition.* For purposes of this section, *a person engaged in the delivery outside the mails of any type of mailable matter* is as defined in § 7001.102(d)(3).

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance

United States Postal Service.

Emory Rounds,

Director,

U.S. Office of Government Ethics.

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